IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE C.V.RAMULU

-

WRIT APPEAL NO : 1507 of 2004

And

WRIT PETITION No.12452 of 2002

(Writ Appeal under Clause 15 of the Letters Patent Appeal against the Order dated 24//02//2004 in WVMP NO:2764 OF 2003 IN WP NO : 12452 OF 2002 on the file of the High Court.)

W.A.No.1507 of 2004

Between:

M. Narasimha Rao, S/o Sri Tirupataiah,
Religious Service, R/o 6-3-48, Bank Colony, Khammam - 507 002.

..... APPELLANT

AND

1 Government of A.P. reptd. by its Secretary, Endowments Department, Secretariat, Hyderabad.
2 Hon'ble Minister for Endowments, A.P. Secretariat, Hyderabad.
3 Regional Joint Commissioner, Endowments Department, Multi-zone- III, Tilak Road, Hyderabad.
4 Dy. Commissioner , Endowments Department, Tilak Ropad, Hyderabad.
5 Assistant Commissioner , Endowments Department, Near Satyam Theater, Khammam.
6 The Inspector, Endowments Department, Near Ganesh Temple, Kothagudem Division, Kothagudem, Khammam District.
7 The Executive Officer, Sri Lakshmi Narasimha Swamyvari Devasthanam, Garlavoddu village, Enkur Mandal, Khammam District.
8 Sri M. Chandrasekhar, s/o late Ramarao,
R/o 5-10-32, Govind Centre, Yellendu, Khammam District.

.....RESPONDENTS

W.P.No.12452 of 2002:

Between:

M. Narasimha Rao, S/o Sri Tirupataiah,
Religious Service, R/o 6-3-48, Bank Colony, Khammam - 507 002.

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6 The Inspector, Endowments Department, Near Ganesh Temple, Kothagudem Division,
Kothagudem, Khammam District.
7 The Executive Officer, Sri Lakshmi Narasimha Swamyvari Devasthanam, Garlavoddu village, Enkur Mandal, Khammam District.
8 Sri M. Chandrasekhar, s/o late Ramarao,
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.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or Direction more particularly one in the nature of Writ of Prohibition declaring the proceedings in Appeal Memo NO.13188/End II(2)/2000-I, before the Respondent NO.2, as illegal, without jurisdiction and quash the same.

Counsel for the Appellant-Petitioner:MR.J.PRABHAKAR

Counsel for Respondents 1 to 7: GP FOR ENDOWMENTS

(in both)

Counsel for Respondent No.8: MR. O.RAMESH

(in both)

The Court made the following oral order:(per Sri Devinder Gupta, CJ)

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and

THE HON'BLE MR JUSTICE C.V.RAMULU

-

WRIT APPEAL NO : 1507 of 2004

And

WRIT PETITION No.12452 of 2002

Common Order:(per Sri Devinder Gupta, CJ)

This appeal arises out of an interim order passed in the pending writ petition. Initially, an interim order was granted as prayed for in the interim application, but on the next date, when none appeared for the writ petitioner, the said interim order was vacated. Subsequently, the writ petition was admitted for hearing and an order was passed extending the interim stay granted earlier without noticing the fact that the said order stood vacated. Later on, an application to vacate was filed and the order which was passed while admitting the writ petition was vacated. Thus, now, appeal is preferred before us.

When the appeal came up for consideration, learned counsel for the parties agreed for disposal of the writ petition also. Hence, both the writ appeal and writ petition are taken up for final disposal since a very short question is involved.

We have heard the learned counsel for the parties and gone through the record.

On 11-08-2000, an order was passed by the Assistant Commissioner of Endowments in proceedings R. Dis.No.C/2966/96, dated 11-08-2000, in exercise of his powers under Sub-Section 10 of Section 43 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 30 of 1987 (for short "the Act"). The name of the appellant herein was ordered to be added as member of the founder family in column No.4 of the register maintained under Section 43 of the Act. Certificate of registration was thus ordered to be amended. Feeling aggrieved against this order, the 8th respondent in the writ petition approached the Joint

Commissioner by filing a revision petition, namely, R.P. No.43 of 2000 with a prayer to set aside the said order. The revision petition filed under Section 92 of the Act was dismissed and the matter was thus carried in further appeal before the State Government under Section 93 of the Act, against the order dated 29.9.2001 of the Regional Joint Commissioner, Endowments, Hyderabad.

Writ petition was filed by the appellant questioning the jurisdiction of the State Government to entertain and hear the appeal filed by the 8th respondent as also of entertaining the revision petition by the Regional Joint Commissioner.

The ground urged is that when any person is aggrieved by an entry in the Register maintained under Section 43 of the Act, the only remedy, which can be availed of would be to apply to the Deputy Commissioner for modification or annulment of such entry, or for directing the making of such entry, under Section 45 of the Act. Sub-section (2) of Section 45 says that where any such application relates to the right claimed by the applicant in respect of such entry or omission, in the register maintained under Section 43 of the Act, the Deputy Commissioner shall enquire into and decide the question as if it were a dispute within the meaning of Section 87 and the provisions of Chapter XII shall apply to such proceedings.

It is not disputed before us that 8th respondent, who preferred revision before the Regional Joint Commissioner and has preferred appeal before the State Government, is a person aggrieved by the entry as made in the register maintained under Section 43 of the Act by virtue of the order passed by the Assistant Commissioner, Endowments on 11-08-2000. It is also not disputed that the 8th respondent is claiming right in himself in respect of such entry. Therefore, the only remedy available to 8th respondent was to approach the Deputy Commissioner for modification or annulment of the entry, which was ordered to be made by order dated 11-08-2000. Instead of doing so, the 8th respondent preferred revision.

Learned counsel for the 8th respondent has placed reliance upon Section 93 of the Act as regards the power of the Government to call for the record of the Commissioner or Deputy Commissioner or Assistant Commissioner or any Executive Officer or any trustee of a charitable or religious institution and pass appropriate orders thereupon, and submits that appeal is maintainable.

The submission so made cannot be accepted in terms of the exception which has been carved out in Section 93 itself that such power cannot be exercised with respect to a proceeding in respect of which a suit or an appeal or an application or a reference to Court is provided by the Act. Section 45 of the Act, provides for filing of an application before the Deputy Commissioner and against the order passed by the Deputy Commissioner further remedy which would be available would be an appeal under Section 88 of the Act, which finds place in chapter XII of the Act and Sub-Section 3 of Section 45 stipulates that the Deputy Commissioner shall enquire into the said question as if it were a dispute within the meaning of Section 87 of the Act and the provisions of Chapter XII shall apply. Therefore, any order passed by the Deputy Commissioner would be deemed to be an order under Section 87 of the Act, against which, appeal under Section 88 would lie to the District Judge and in case the matter pertains to area limits of Municipal Corporation of Hyderabad, to the Chief Judge, City Civil Court.

In view of the aforementioned legal position, we are of the view that proceedings before the Regional Joint Commissioner and the appeal preferred before the State Government under Sections 92 and 93 respectively of the Act, by the 8th respondent, were wholly without jurisdiction and incompetent and are hereby quashed with liberty reserved to the 8th respondent to resort to the provisions of Section 45 of the Act, in case, he would like to do so.

Learned counsel for the appellant/writ petitioner fairly agreed that as and

when such proceedings are initiated within six weeks from today, the appellant will not raise the question of limitation and jurisdiction of the Deputy Commissioner.

In case, if the 8th respondent files such an appeal, the appellant will not raise the question of limitation and such proceedings will be decided by the Deputy Commissioner, Endowments in accordance with law.

In view of the above, both the writ appeal and the writ petition stand disposed of. No costs.

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DEVINDER GUPTA,CJ

Date: 8th October, 2004

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C.V. RAMULU,J

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To

1 The Secretary, Government of A.P., Endowments Department,
Secretariat, Hyderabad.
2 The Hon'ble Minister for Endowments, A.P. Secretariat, Hyderabad.
3 The Regional Joint Commissioner, Endowments Department, Multi-zone- III, Tilak Road, Hyderabad.
4 The Deputy Commissioner , Endowments Department, Tilak Ropad, Hyderabad.
5 The Assistant Commissioner , Endowments Department, Near Satyam Theater, Khammam.
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7 The Executive Officer, Sri Lakshmi Narasimha Swamyvari Devasthanam, Garlavoddu village, Enkur Mandal, Khammam District.
8 Sri M. Chandrasekhar, s/o late Ramarao,
R/o 5-10-32, Govind Centre, Yellendu, Khammam District.

9 Two C.Cs. to the Government Pleader for Endowments, High Court of Andhra Pradesh (OUT)

10 Two C.D.copies.